HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 278 / 2005

Adesh Kumar S/o Babu Lal Sharma
R/o village Sandarwal Boghpur
District Dehradun .....Applicant

Versus

1. State of Uttaranchal
2. Smt. Premwati Sharma
   S/o Late Babu Lal Sharma
   R/o Sadarwal, Boghpur
   District Dehradun .....Respondents

Hon'ble J.C.S. Rawat, J.

Heard Sri Vinod Sharma learned counsel for the applicant and learned A.G.A. for the State.

This is a petition under section 482 Cr.P.C. against the order dated 11.4.2005 passed by the Special Judicial Magistrate, Rishikesh, District Dehradun in criminal case No.2093/2002 in case crime No.38/376/2002 under section 420, 467, 468, 452, 323, 504, 406 I.P.C.

As per the prosecution version, the applicant committed forgery by way of forged signature. It has been alleged that the charges were framed against the applicant. During the trial, the document in question was sent for the opinion of the handwriting expert by the concerned court and the report was obtained and few witnesses were examined by the court. Thereafter, Assistant Prosecution Officer (A.P.O.) requested the court to close the evidence on 24.3.2005. The evidence was closed at the behest of the prosecutor and the applicant was examined under section 313 Cr.P.C. When no evidence was adduced by the applicant before the court below, the respondent No.2 moved an application on 4.4.2005 under section 311 Cr.P.C. and prayed to examine the witnesses viz. Sri Sita Ram Singh, Manager, P.N.B. Sahiya, Sri Permesh, Ex-

Manager, P.N.B., Sahiya and Sri Vinod Kumar Indra Nagar Rishikesh. It has been alleged in the said application that the A.P.O. has not examined the witnesses who were necessary for the trial of this case. The main witness-Rani Pokhari was the main witness, but she was not examined by the A.P.O. The said witness is required to be examined as she will explain as to how the F.D. was transferred in the name of the applicant-Adesh kumar and how the money was fraudulently withdrawn. It was further alleged that Vinod Kumar is the main witness who took the complainant to the hospital when the incident of 'marpeet' took place with the complainant by the applicant. The accused has threatened the witnesses and they were not allowed to come to the court.

It has been alleged in the order of the learned Magistrate that no written objection has been filed before the court below. Only oral objections were made by the applicant-accused and it was alleged before the court below that the complainant has not right to file the application. The prosecution has closed the evidence and the statement under section 313 Cr.P.C. had been recorded and the case was fixed for arguments. Perusal of the order of the Magistrate reveals that the accused has not challenged before the trial court that the witnesses are not material for the trial of the case. The learned Magistrate while considering the evidence and the application of the complainant came to the conclusion that the witnesses are important to dispose of the case and in the interest of justice he had allowed the application of the complainant and summoned the witnesses at the behest of the complainant.

It was further contended by the learned counsel for the applicant that the complainant has not right to give

the application and the said application should have been moved by the State. The learned A.G.A. refuted the contention. It is alleged in the application itself that the A.P.O. has not produced the witnesses and closed the evidence. Perusal of the application reveals that the complainant has specifically alleged in the application that the said witnesses aere not produced by the A.P.O. If the witnesses are not produced by the A.P.O., the complainant cannot sit idle and ultimately the complainant is the sufferer in this case. In such a situation, the complainant can definitely file the said application.

In view of the above, I am in agreement with the findings of the learned Magistrate. Therefore, the petition lacks merit and is dismissed in-limine.

(J.C.S. Rawat, J.)

Dated 12.5.2005

LSR